

**REMARKS**

The Office Action mailed September 3, 2008 has been received and reviewed. By the present Response and Amendment, Claims 3, 21-68, and 71-77 are canceled, Claims 1, 4 and 16 are amended, and new Claims 78-80 are presented. No new matter is introduced.

Claims 13-15 have been indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. New Claims 78-80 are presented, incorporating the subject matter of previous Claims 13-15 in independent form.

Claim 4 is rejected under 35 U.S.C. § 112, second paragraph. Claim 4 is amended to clarify that the "guide posts" are guide members within the cassette, which are slidably engaged within recesses on opposed sides of the protective cap of the lancet. (See page 39, lines 16-26, and reference number 404 in Figures 40, 42 and 43 of the specification as originally filed).

Claims 1-4, 8, 9 and 13-15 stand rejected on the ground of nonstatutory double patenting over claims of U.S. Patent Nos. 7,150,755. A terminal disclaimer is submitted herewith to overcome this ground of rejection.

Claims 1-3 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,783,537 to Kuhr et al. Claim 1 is rejected under 35 U.S.C. § 102(a/e) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over U.S. Published Patent Application No. 2002/0120216 to Fritz. Claims 1-3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application No. 2004/0102803 to Boecker et al. Claims 1 - 3, 5-12, 17-20 and 69-71 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,228,100 to Schraga in view of U.S. Patent No. 6,706,159 to Moerman et al. Claim 16 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,228,100 to

Schrage in view of U.S. Patent No. 6,706,159 to Moerman et al., and further in view of U.S. Patent No. 6,197,041 to Shichman et al. Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,228,100 to Schrage in view of U.S. Patent No. 6,706,159 to Moerman et al., and further in view of U.S. Patent No. 5,385,571 to Morita et al.

Applicant traverses the §102 and §103 grounds of rejection and requests reconsideration in view of the presently amended claims. For example, amended Claim 1 recites:

“a piston ... for propelling the lancet along a path of travel, said piston having a receiver for releasably engaging and retracting the lancet to separate the lancet body and the protective cap along a retraction portion of the path of travel of the lancet...”

and

at least one guide member within the cassette for engaging the separated protective cap to guide the protective cap transversely out of the path of travel

and

a retainer position within the cassette to retain the separated protective cap.

This claimed combination of features is nowhere disclosed or suggested in the art of record. The Examiner asserts that the “biasing element 94” of the Schrage ‘100 reference moves the lancet cap transversely out of the lancet path of travel. Even if this were the case, there is no disclosure or suggestion in the Schrage ‘100 reference indicating that retraction of the lancet via engagement with a drive piston separates the lancet cap from the lancet body. Quite to the contrary, Figure 6 of the Schrage ‘100 reference indicates that the biasing element 94 is pivoted to remove the protective tip 72 of the lancet, independent of any operation of the device’s drive mechanism.

Moreover, there is no disclosure or suggestion in the art of record for applicant’s claimed guide member(s), which guide the separated protective cap transversely out of

the path of travel of the lancet. The biasing element 94 of the Schraga '100 reference only serves to remove the protective tip 72 of the lancet. Once the protective tip 72 is free of the lancet needle, it would appear to be wholly unattached and unguided. And before the protective tip 72 is free of the lancet needle, it could not move transversely relative to the lancet's path of travel without bending or breaking the lancet needle.

The art of record also fails to disclose or suggest the provision of a retainer position within a cassette to retain a separated protective cap, as presently claimed. Rather, the protective caps of the cited references are either not separated (Boecker et al, Fritz), or are separated and not retained (Kuhr et al, Schraga).

Claims 2, 4-20, 69 and 70 being dependent from Claim 1, are therefore, likewise believed to be allowable over the art of record.

### CONCLUSION

In view of the amendments submitted herein and the above comments, it is believed that all grounds of rejection are overcome and that the application has now been placed in full condition for allowance. Accordingly, Applicant earnestly solicits early and favorable action. Should there be any further questions or reservations, the Examiner is urged to telephone Applicant's undersigned attorney at (770) 984-2300.

Respectfully submitted,



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